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October 24, 2010

Hon. Susan Illston
United States District Judge
United States District Court
450 Golden Gate Ave.,
San Francisco, CA., 94102

Re: *United States v. Aspillera* No. 3:09-cr-1102-SI
Late Filing of Sentencing Documents

Your Honor:

This case is on for sentencing on October 26, 2010. As is obvious from the docket, the defense sentencing documents are filed quite late.

At outset, although I had little or no control over the events which produced the late documents, I nevertheless am sorry for the lateness. I am the lawyer and it is my responsibility to coordinate matters. I tried my best, but failed. However, delay causes inconvenience even if unintended or unavoidable. To the extent that you, your staff or Mr. Sprague have been inconvenienced, I most sincerely apologize.

That said, there really is an objective reason for what happened. As is obvious from the memorandum and exhibits, Ms. Aspillera suffers from a number of overwhelming life-challenges. The entire sentencing process, as is reflected in stipulations entered into by the parties postponing the sentencing on several occasions, has been delayed by a constellation of issues in this regard. Perhaps I might have driven her faster. Under the circumstances, I opted not to do so. Again, however, I stress that by virtue of my role the responsibility is not hers, but mine¹.

The question at this point is what to do. I did not receive either the medical records (and for that I blame the University of California, since I began collecting them much earlier), nor Dr. Good's report until October 18th. Regrettably, that was the very day I started a long felony trial in state Court. I tried to frame a coherent sentencing memorandum in intervals during the trial, but this is quite difficult and I did not succeed. I was only able to produce a competent effort as of today.

¹ In addition – and I am not soliciting sympathy – all of this comes at one of the worst periods in my life, a prolonged intermittent medical crisis involving my mother in Los Angeles, which has caused me delay on a number of occasions.

At the outset of my trial, I telephoned Mr. Sprague and asked if he would consent to a short continuance. He declined. I fully understand why, as the case has been continued on several occasions. However, that left me in the position which leads to today. As I understood it, October 26th was *the* one day this Court would have been available during the relevant timeframe for *any* proceedings on this case, whether a continuance or the sentencing. It would have been impudent for me to file a continuance motion instead of sentencing documents. I therefore felt my best choice was to submit what I could as rapidly as I could, and then send this letter.

I am assuming that the Court wishes to go forward. I have faith that the Court will not do so without having fully reviewed the sentencing documents. I would hope that the Court will have had enough time by Tuesday to review these materials. If not, I will do whatever I am able to do to make myself available on a different date. As for my apology, if that is not enough, I also submit to the discretion of this Court. Whatever the Court decides to do, I want to make it clear that Ms. Aspillera is in no way to be faulted for any delay.

I truly hope that this is a minor problem, but again, I apologize for my part in it.

Very Sincerely,
//s// Donald Thomas Bergerson
Donald Thomas Bergerson

DTB/ar cc: file

Served on AUSA Sprague via email;L

PROOF OF SERVICE

This letter was served on AUSA Sprague via the Court's ECF delivery system after document, tendered on October 24, 2010, was refiled as an e-filed formal document, and this was done on October 25, 2010. I declare under penalty of perjury that this is true, save for portions executed on information and belief, which I believe are true. EXECUTED: City and County of San Francisco, Northern District of California, this October 25, 2010.

//s// Donald Thomas Bergerson